

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SPRING PHARMACEUTICALS, LLC,)	
)	
Plaintiff,)	
)	
)	
v.)	
)	Civil Action No. 2:18-cv-04553-JCJ
RETROPHIN, INC., MARTIN SHKRELI,)	
MISSION PHARMACAL COMPANY, and)	
ALAMO PHARMA SERVICES, INC.,)	
)	
Defendants.)	
)	

**RETROPHIN'S OPPOSITION TO NON-PARTY LESLEY ZHU'S PETITION FOR
ATTORNEYS' FEES**

Retrophin, Inc. (“Retrophin”) submits this opposition to Non-Party Lesley Zhu’s Petition for Reasonable Attorneys’ Fees and Costs Pursuant to the Court’s August 7, 2019 Memorandum Opinion and Order. (Dkt. No. 82, “Petition”).

Retrophin accepts the Court’s decision (Dkt. Nos. 77 and 78) that the deposition Retrophin sought to take of non-party Lesley Zhu exceeded the scope of discovery permitted by the Court’s order on discovery relating to Plaintiff Spring’s Article III standing (Dkt. No. 53, “Discovery Order”).

However, the amount of attorneys’ fees Ms. Zhu is seeking—over \$110,000—is unreasonable and unwarranted. Making a motion to quash a non-party subpoena and opposing a contempt motion are relatively straightforward tasks that should not have required over 150 attorney hours, and certainly not 57 hours by Alan Klein, a 50-year veteran of the bar and senior partner at Duane Morris, plus an additional 30 hours by the Managing Partner of Duane Morris in Los Angeles

including for tasks such as legal research.¹ (Petition, Exs. B, C, and H). Indeed, Mr. Klein personally spent 23 hours just in preparing the instant petition for fees, almost as much time as he spent responding to the subpoenas and on the motions to quash and for contempt. (Petition, Ex. H).

We are unaware of any court that has awarded attorneys' fees for a motion to quash remotely approaching what is claimed by Ms. Zhu. Indeed, courts awarding fees for motions to quash Rule 45 subpoenas have typically awarded fees amounting to a small fraction of the \$110,000 sought by Ms. Zhu. *See, e.g., Night Hawk Ltd. v. Briarpatch Ltd.*, 2004 WL 1375558, at *3-4 (S.D.N.Y. 2004) (finding request for \$16,299, representing 55 hours of attorney time, "excessive" for motion to quash and fee petition and awarding attorneys' fees of \$4000); *Precourt v. Fairbank Reconstruction Corp.*, 280 F.R.D. 462, 473 (D.S.D. 2011) (finding 49.7 hours an "unreasonable" amount to time to prepare a motion to quash, reducing hours to 20, and awarding attorneys' fees of \$5,618); *Mapes v. Wellington Capital Group*, 2008 WL 2487795, at *1-2 (D. Neb. 2018) (awarding attorneys' fees of \$6009 for motion to quash). The highest fee award for a sanction under Rule 45 that we have been able to find is \$30,000, a reduction from what the court called an "eye-popping" request for \$164,401.42. *Am. Broad. Corp., Inc. v. Aereo, Inc.*, 2013 WL 6086867, at *6 (N.D. Iowa 2013).

Accordingly, Retrophin respectfully requests that the Court award attorneys' fees of no more than \$15,000, equivalent to 30 attorney hours at \$500 per hour.

¹ The Third Circuit explicitly rejects awarding fees for senior attorneys charging high hourly rates and running up hours where there is a more economical alternative. *See Ursic v. Bethlehem Mines*, 719 F.2d 670, 677 (3d Cir. 1983) ("A fee applicant cannot demand a high hourly rate—which is based on his or her experience, reputation, and a presumed familiarity with the applicable law—and then run up an inordinate amount of time researching that same law. . . . Nor do we approve the wasteful use of highly skilled and highly priced talent for matters easily delegable to non-professionals or less experienced associates. Routine tasks, if performed by senior partners in large firms, should not be billed at their usual rates. A Michelangelo should not charge Sistine Chapel rates for painting a farmer's barn.")

Dated: September 6, 2019

Respectfully Submitted,

s/ Philip Bowman

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CERTIFICATE OF SERVICE

I certify that on September 6, 2019, I filed this document on the Court's docket using the Court's CM/ECF system. Based on the Court's records, all counsel of record were served with a copy of the foregoing document by electronic means.

s/ Richard E. Coe
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